

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Donald K. Forest

Serial No.: 08/506,032

Filed: 24 July 1995

Title: DATA ENTRY METHOD
AND APPARATUS



Group Art Unit:

2774

Examiner:

Regina Liang

Applicant Document Number:

032-40

Certificate of Mailing under 37 C.F.R. §1.8

I hereby certify that this Certificate of Mailing and the correspondence listed below are being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231, on

14 October 1999.

1. a 3 page Response to Notification of Non-Compliance with 37 CFR §1.192(c), Applicant Document No. 032-38;
2. three signed copies of a 200 page Amended Appeal Brief, Applicant Document No. 032-39.

Donald K. Forest
Donald K. Forest

14 October 1999
Date of Signing

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RESPONSE TO

NOTIFICATION OF NON-COMPLIANCE WITH 37 CFR §1.192(c)

Honorable Commissioner of Patents and Trademarks

Washington, D.C. 20231

Sir:

Pursuant to the appeal filed 12 April 1999 and received by the PTO 14 April 1999 in the above-identified Application, Appellant on 13 September 1999 filed the Appeal Brief, Applicant Document No. 032-36. On 12 October 1999, the Examiner mailed to Appellant a Notification of Non-Compliance with 37 CFR §1.192(c). This Response both contests the grounds of the Notification and complies with the Notification.

The Notification states that the Appeal Brief "is lacking the presence of items under the appropriate headings of (1) Real Party Of Interest; and (2) Related Appeals And Interferences." This is true. However, their presence is not required under 37 CFR §1.192. Therefore the Appeal Brief complies with 37 CFR §1.192.

The two items and their headings are not required for two reasons: (a) 37 CFR §1.192(c) states that "[t]he brief shall contain the following items under appropriate headings and in the order indicated below **unless the brief is filed by an applicant who is not represented by a registered practitioner**". (emphasis added.) Appellant is prosecuting this Application and its appeal *pro se*. (Appeal Brief, p.1, line 23); and (b) assuming *arguendo* that Appellant was not *pro se*, neither of these items or their respective headings are required in the circumstances of this appeal under 37 CFR §1.192(c) and MPEP 1206. With respect to the Real Party In Interest, 37 CFR §1.192(c)(1) requires

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“[a] statement identifying the real party in interest, **if the party named in the caption of the brief is not the real party in interest.**” (emphasis added.) The party named in the caption of the Appeal Brief, Donald K. Forest, is the real party in interest. Furthermore, MPEP 1206, under the subheading APPEAL BRIEF CONTENT, provides “If appellant does not name a real party in interest, the
5 examiner will assume that the party named in the caption of the brief is the real party in interest.... While the examiner will assume that the real party in interest is the individual or individuals identified in the caption when the real party in interest is not explicitly set out in the brief, nevertheless, the **Board** may require the appellant to explicitly name the real party in interest.” (emphasis added.) The clear implication of this MPEP section is that the **examiner** may not require
10 the appellant to explicitly name the real party in interest. With respect to the Related Appeals and Interferences, there are no appeals or interferences which will directly affect, be directly affected by, or have a bearing on the Board’s decision in this appeal. MPEP 1206, under the subheading APPEAL BRIEF CONTENT, provides “If appellant does not identify any other appeals or interferences, the examiner will presume that there are none. While the examiner will assume that there are no related
15 cases when no related case is explicitly set out in the brief, nevertheless, the **Board** may require the appellant to explicitly identify any related case.” (emphasis added.) The clear implication of this MPEP section is that the **examiner** may not require the appellant to explicitly identify any other appeals or interferences.

In compliance with the Notification, Appellant submits herewith an Amended Appeal Brief,
20 Applicant Document No. 032-39. The Amended Appeal Brief adds the sections Real Party Of Interest and Related Appeals And Interferences, amends the introduction of the Appeal Brief on p.1 to reference the Notification, and amends references in the Brief from Appeal Brief to Amended Appeal Brief. No other amendments are made to the Appeal Brief.

The authorization to charge the Appellant’s Deposit Account for any fees due in connection
25 with the filing of the Amended Appeal Brief is contained in the Amended Appeal Brief. Appellant believes he should not be charged any fees for filing of the Amended Appeal Brief because the Examiner erred in requiring Appellant to do so. Appellant reserves the right to seek a refund of any fees charged.

Applicant respectfully requests that the Examiner reconsider the Notification of Non-Compliance with 37 CFR §1.192(c) and enter this Response into the record of this Application.

Respectfully submitted,



Donald K. Forest

Applicant

Date: 14 October 1999

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